

Decision 03-03-037 March 13, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of California Water Service Company (U 60 W), a Corporation, for an Order Establishing a Moratorium on New Service Connections in Excess of 250 Service Connections in the Coast Springs Water System Division of the Redwood Valley District.

Application 02-03-032
(Filed March 14, 2002)

Tom Smegal, Shawn Heffner, and Gregory Bowling,
Attorney at Law, for California Water Service
Company, applicant.

Natalie Walsh, for Office of Ratepayer Advocates,
protestant.

Joan E. Healy, Attorney at Law, and Michael A. Fisher,
interested parties.

OPINION ESTABLISHING CONNECTION MORATORIUM

Summary

California Water Service Company (CalWater) is ordered to establish a moratorium on new water connections in its Coast Springs water system, to revoke any previously approved applications for service for which an applicant is unable to provide proof of a building permit within 18 months, to maintain a waiting list for new applicants, and to notify applicants and prospective applicants of the new procedures. To ensure progress toward lifting the moratorium, CalWater is required to complete a well reconstruction project and a hydrogeologic study by the end of 2003, and to complete all other necessary

improvements by the time the moratorium expires in three years. In addition, CalWater is ordered to file a new service area map to clarify its service area boundaries.

Background

Coast Springs is a small water system serving the Dillon Beach and Oceana Marin areas, approximately four miles west of Tomales in Marin County. Coast Springs is a division of CalWater's Redwood Valley District. CalWater's domestic water supply permit for Coast Springs issued by the California Department of Health Services (DHS) on December 18, 2000 provides that it may not exceed 250 service connections until CalWater has demonstrated to DHS that it has sufficient capacity to handle the additional connections. At the time this application was filed, the Coast Springs system had 242 active connections, had accepted applications for eight new service connections, and was requiring others seeking service to go on a waiting list.¹

CalWater acquired Coast Springs as part of its acquisition of Dominguez Water Company in May 2000.² At the time, Dominguez was under Commission order to "make all improvements necessary to remove the moratorium placed on Coast Springs by the Department of Health Services."³ In accepting the Commission's authorization to acquire Dominguez, CalWater also assumed all of

¹ The precise numbers are uncertain, but estimates in the hearing record reflect 11 applicants on the waiting list for connections as of August 2002, five applicants approved for service but not yet connected, and 269 potential customers if the service area were fully built out.

² Decision (D.) 00-05-047.

³ D.99-07-041, Ordering Paragraph 1.f.

Dominguez' public utility obligations related to Coast Springs, including the obligation to make necessary improvements to remove the DHS moratorium.

In April 2001, CalWater submitted Advice Letter 1491 requesting authority to establish a Commission moratorium on new connections above 250 in the Coast Springs system. CalWater withdrew the advice letter in July 2001 upon being informed that Public Utilities Code Section 2708 requires a hearing before the Commission may authorize a connection moratorium. Eight months later, CalWater filed Application (A.) 02-03-032 asking for essentially the same authority as it had sought in Advice Letter 1491.

On July 3, 2002, CalWater applied to DHS to revise its water supply permit to increase the number of connections allowable from 250 to 264. DHS responded on July 29, 2002 by requesting additional data to allow an evaluation of the source capacity and water use demand in accordance with the California Waterworks Standards. CalWater thereupon withdrew its request, stating that under the California Waterworks Standards it could not support 264 connections based on its current water production data.

A.02-03-032 asks the Commission to authorize CalWater's DHS-mandated current practice of limiting active service connections to 250 (or to any higher limit DHS may subsequently approve), to revoke any previously accepted applications if proof of a building permit is not provided within 18 months of the acceptance of the application for water service or the approval date of this application, whichever is later, and to establish a waiting list procedure for additional applicants.

A prehearing conference was held on June 3, 2002 at which the Commission's Office of Ratepayer Advocates (ORA) and two intervenors appeared. Rather than support or oppose CalWater's request, ORA sought to

have the Commission investigate what steps CalWater had taken and would take to improve Coast Spring's water supplies and eliminate the need for a moratorium. Joan Healy and Michael Fisher⁴ each advocated the Commission's imposing and enforcing an order that CalWater immediately take all necessary steps to improve system capacity so that no moratorium would be needed. Healy would have the Commission deny CalWater's application and require it to provide service authorization letters to all on the waiting list, or in the alternative, order specific remedial steps intended to make additional connections available and improve supplies in the short term while accelerating CalWater's efforts to have the DHS moratorium lifted.

The Assigned Commissioner subsequently issued a scoping ruling confirming the need for evidentiary hearing and establishing the following issues:

1. Should CalWater be authorized to limit to 250 the number of active service connections in its Coast Springs water system?
2. If so, should CalWater be authorized to implement the procedures in the Application for establishing and maintaining a waiting list for new connections?
3. What plans does CalWater have to address its Coast Springs water system supply problems and lift the moratorium?

⁴ Both Fisher and Healy were property owners on the waiting list. Fisher was waiting at the time the evidentiary hearing was held, while Healy had recently sold her property and the new owner had taken her spot on the list.

One day of evidentiary hearing was held on October 23, 2002. Healy and Fisher presented testimony; ORA did not participate. The proceeding was submitted on receipt of concurrent briefs filed November 13, 2002.

Discussion

The Need for a Moratorium

General Order (GO) 103 requires Commission-regulated water utilities to comply with the regulations and orders of DHS:

Any utility serving water for human consumption shall hold or make application for a permit as provided by the Health and Safety Code of the State of California, and shall comply with the laws and regulations of the state or local Department of Health Services....⁵

The parties here do not dispute that CalWater's domestic water supply permit for Coast Springs issued by DHS limits it to 250 service connections. This Commission, through the GO 103 section cited above, also requires CalWater to comply with that DHS-established limit. At the same time, however, CalWater has an obligation as a public utility to serve all customers within its service area absent justification to the contrary.⁶ In this case, CalWater is under Commission order to make the improvements necessary to remove the DHS moratorium, and it has not in this proceeding attempted to argue otherwise. Rather, it seeks only explicit Commission recognition and endorsement of the connection limit while it pursues solutions.

⁵ GO 103, Section II.1.a.

⁶ "It is a basic rule of utility law that a utility must serve all customers within its service area to the reasonable limit of its facilities." (*Brockman v Smithson Springs Water Co.* (1957) 56 Cal.P.U.C. 28.)

Public Utilities Code Section 2708 provides:

Whenever the commission, after a hearing had upon its own motion or upon complaint, finds that any water company which is a public utility operating within this State has reached the limit of its capacity to supply water and that no further consumers of water can be supplied from the system of such utility without injuriously withdrawing the supply wholly or in part from those who have theretofore been supplied by the corporation, the commission may order and require that no such corporation shall furnish water to any new or additional consumers until the order is vacated or modified by the commission. The commission, after hearing upon its own motion or upon complaint, may also require any such water company to allow additional consumers to be served when it appears that service to additional consumers will not injuriously withdraw the supply wholly or in part from those who theretofore had been supplied by such public utility.

DHS has determined that the allowable safe capacity of CalWater's Coast Springs system under current conditions of supply and usage is 250 connections. When that limit has been reached, no further consumers can be supplied without subjecting existing users to risk of injury from supply shortages. We will order the connection moratorium CalWater seeks. CalWater and Healy both suggest that the moratorium also contain a provision for automatic adjustment should DHS later raise the number of permitted connections to a new, higher level. We will include that provision as well.

Two other points merit noting. First, the record shows that in turning down Healy's application for service, CalWater cited the following two provisions of GO 103 as its justification:⁷

⁷ Exhibit H-9.

I.7 Refusal to Serve

- a. Conditions for Refusal. The utility may refuse to serve an applicant for service under the following conditions:

* * *

- (2) If the intended use of the service is of such a nature that it will be detrimental or injurious to the service furnished to existing customers.
- (3) If, in the judgment of the utility, the applicant's installation for utilizing the service is unsafe or hazardous, or of such a nature that satisfactory service cannot be rendered.

Healy maintains that it is neither the nature of an applicant's intended use of the service nor an applicant's installation for utilizing service that renders an additional connection above 250 detrimental, injurious, unsafe or hazardous.

Rather, it is the fact that CalWater has not undertaken necessary improvements to serve its customers, improvements this Commission has ordered be made. We agree. CalWater was wrong to cite either of these provisions of GO 103 as justification for denying service to a new applicant where the underlying problem was its own lack of capacity.

Lastly, CalWater acknowledged during the evidentiary hearing that the current service area map in its tariffs is inadequate in that it is not sufficiently clear and usable to determine which lots are in its service area and which are not. In its brief, CalWater stated that it was amenable to updating its service area map through an advice letter filing. We will so order.⁸

⁸ Public Utilities Code Section 2709: "The Commission may require any water corporation to file with the commission a statement in writing defining and describing the lands and territory to be supplied by the corporation with water."

Lifting the Moratorium

Having decided that the Commission should order a moratorium, the next question must be whether and when it should expire. CalWater hopes it will not be needed for long, and suggests the Commission impose it for two to three years, after which CalWater would, if necessary, file another application justifying further extension. No party opposes setting an expiration date if a moratorium is established.

The length of time the moratorium should last depends on how quickly CalWater moves to improve the system. This invokes the third issue from the Assigned Commissioner's scoping ruling: What plans does CalWater have to address its Coast Springs water system supply problems and lift the moratorium?

As noted earlier, by D.99-07-041 we required Dominguez Water Company to make improvements to lift the moratorium, and CalWater succeeded to that obligation as a result of the authority granted in D.00-05-047 to acquire Dominguez. The only major improvement completed in the Coast Springs water system since D.99-07-041 was Dominguez' replacement of a 126,000 gallon storage tank with a 210,000 gallon tank in late-1999, before CalWater acquired Dominguez.⁹ CalWater described two efforts it plans to help alleviate the shortage: by the end of 2002, reconstruct the infiltration gallery (Well #4) that is its largest source of water;¹⁰ and during 2003, replace Coast Springs' treatment

⁹ That 210,000 gallon tank was a major factor Dominguez cited to DHS in 1999 as support for increasing the number of permitted connections from 220 to the current 250 level.

¹⁰ CalWater's witness testified that his project was contingent on CalWater's corporate approval.

plant to meet the surface water treatment rule, which may broaden the sources of supply that could be used. It was also considering having a hydrogeologist do a study to determine whether there are promising locations for additional wells. CalWater described each of these efforts in tentative terms, saying they were dependent variously on corporate approval, Commission approval in rates, and/or customers' ability to pay for them. And, it emphasized, even if these improvements are made, there is no assurance they will produce satisfactory results or lead DHS to increase the number of permitted connections.

Healy argues that CalWater is in violation of both its duty as a public utility and the requirement placed upon it by D.99-07-041 to make the improvements necessary to serve those in its service area. The only significant improvement to date has been the new storage tank completed in 1999 under Dominguez. Rather than pursue plant betterments when it took over Coast Springs, CalWater apparently placed its hopes on its quickly-abandoned application to DHS to increase the permitted connections from 250 to 264, but that application was not submitted until July 2002, three years after the Commission ordered improvements and two years after CalWater acquired Coast Springs. Even now, the proposed projects CalWater outlines remain tentative.

In short, CalWater has not made sufficient progress that we are assured of its good intentions. CalWater is one of California's largest water utilities. Coast Springs may be a small district in a remote division, but improving it was part of the regulatory bargain CalWater struck in acquiring Dominguez. CalWater is in violation of that regulatory bargain now.

Healy's primary request for relief is that all customers currently on the waiting list be granted immediate water demand letters so they might develop

their lots or sell them more easily. Because that would place the Coast Springs system at risk of violating the DHS connection limit order, we will not do so. If the Commission were unwilling to order demand letters, Healy asks for three alternative orders. First, she asks that the Commission order CalWater to reapply to DHS for additional connections using a system capacity analysis conforming with the California Waterworks Standards. Even CalWater, which has an incentive to increase the DHS connection limit, acknowledges that such a submittal would be futile until improvements are made. Once improvements are made and their impacts assessed, we are confident that CalWater will reapply to DHS if the result supports additional connections. Next, Healy recommends we direct CalWater to complete reconstruction of Well #4 and complete the hydrogeologic study of the Coast Springs area by March 1, 2003, or be subject to fines twice the estimated costs of those projects. Considering CalWater's lack of progress, these projects' limited cost, and CalWater's representation of them as their most promising next steps, we agree they should be undertaken. March 1, 2003 is unrealistic and there is no support in the record for any other specific deadline date; we will order them completed this calendar year. We decline to establish a specific penalty amount at this time, but we place CalWater on notice that its performance may be an issue in general rate cases or other proceedings. Lastly, Healy asks that the Commission retain jurisdiction in this matter in order to ensure CalWater takes all necessary steps. For that, no order is needed.

We will limit the moratorium to three years. That will provide sufficient time to make improvements and have the moratorium lifted, and to file a new application at least one year before the expiration date if an extension is needed. This ensures CalWater will either make the improvements that satisfy DHS, or

will be back before us to explain why it has not complied with our earlier order and this order.

Waiting List Procedures

CalWater proposes this special condition be included in its general metered service tariff to implement a waiting list procedure for applicants for new service:

Applicants requesting water service that would cause the Coast Springs water system to exceed 250 service connections will be placed on a waiting list. Once additional service connections become available, applicants on the waiting list will be notified in the order they were received. Any previously accepted application for water service in the Coast Springs water system may be revoked if proof of a valid building permit is not provided within 18 months of acceptance of the application for water service or the approval date of this Application [A.02-03-032], whichever is later. Applicants who have had their approval revoked in this manner will be placed at the end of the waiting list.

Throughout this proceeding, Healy and Fisher, and others who have written, have emphasized how valuable a commitment to provide water is. The evidence suggests that it is much more difficult for lot owners to sell their properties if potential buyers cannot be assured a water connection will be made available, and when they are sold, lack of water service commitments may drive otherwise-buildable parcels' values down significantly. Thus, it is important that the application and approval process be fair and transparent. Having ordered a moratorium, we agree that a waiting list is also needed. The proposed method is equitable to all, and no party has suggested a different method. One change we would require in CalWater's tariff wording is from "may be revoked" to "will be revoked," to reflect that the procedure is not elective on CalWater's part and that

no applicant on the approved connections list may be allowed to reserve a connection indefinitely. In addition, CalWater will be expected to follow these guidelines in administering its new tariff special condition:

- CalWater must follow a standard procedure for all new service connection applications.
- All future applications for new service connections are to be in writing.
- Approved connections and spots on the waiting list are to be associated with unserved lots, and only a lot owner may apply for a new service connection to that lot
- A new lot owner may succeed to the former owner's approved connection or rank on the waiting list.
- Revisions and exceptions to the approved connection list procedure and waiting list procedure may be made only with Commission approval. Approval may be either by formal application and decision, or with the concurrence of the Water Utilities Division, by advice letter and Commission resolution.
- The approved connections list and the waiting list as of August 2002 were admitted into evidence without objection at the evidentiary hearing.¹¹ CalWater is to begin with those lists, update them for changes as appropriate through the effective date of this decision, and then use the resulting lists as the basis for moving forward following the procedures in this order.

¹¹ Exhibits H-17 and H-18.

- The approved connections list and waiting list are to be public documents, available to customers, would-be customers, Commission staff, and the general public on request. Each list must at a minimum identify the applicant, the location to be served, and the date a written application was received.
- CalWater is to notify all owners of unserved lots within its Coast Springs service territory of the moratorium, the process for applying for a new connection, and the procedures associated with the approved connections list and the waiting list.
- Not less often than every six months CalWater is to remind each applicant on the approved connections list of the date on which his or her previously accepted application for water service in the Coast Springs water system will be revoked if proof of a valid building permit is not provided.
- CalWater is to promptly notify owners of unserved lots within its Coast Springs service territory, and any others who request such notification, of (a) any change in the number of permitted connections, and (b) any request it may make of the Commission for revisions or exceptions to these procedures or to have the moratorium canceled or extended.

Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(d) and Rule 77.1 of the Rules of Practice and Procedure. No comments were received.

Assignment of Proceeding

This matter was initially assigned to Commissioner Duque and later reassigned to Commissioner Kennedy. Administrative Law Judge McVicar is the presiding officer for this proceeding.

Findings of Fact

1. CalWater's domestic water supply permit for Coast Springs issued by DHS provides that it may not exceed 250 service connections until CalWater has demonstrated that it has sufficient capacity to handle the additional connections. CalWater cannot at this time so demonstrate.

2. If Coast Springs water system were to accept all pending applicants for service, it would exceed 250 connections.

3. Coast Springs water system has reached the limit of its capacity in that it is unable to serve more connections than permitted in its domestic water supply permit without injuriously withdrawing the supply from its current users.

4. If DHS should subsequently increase the number of connections allowed by CalWater's domestic water supply permit above 250, Coast Springs would then be able to serve additional customers up to that new limit without injuriously withdrawing the supply wholly or in part from those customers it theretofore had supplied.

5. The guidelines set forth in the body of this decision are needed for administering the new tariff special condition that establishes Coast Springs' connection moratorium.

6. In accepting the Commission's D.00-05-047 authorization to acquire Dominguez, CalWater also assumed all of Dominguez' public utility obligations related to Coast Springs, including the obligation established in D.99-07-041,

Ordering Paragraph 1.f., to make all improvements necessary to remove the new connection moratorium DHS placed on Coast Springs.

7. From the time CalWater acquired the Coast Springs system from Dominguez in May 2000 through November 2002 when this proceeding was submitted for decision, CalWater made no significant improvements necessary to remove the new connection moratorium DHS placed on Coast Springs.

8. CalWater has not complied with D.99-07-041, Ordering Paragraph 1.f.

9. The current Coast Springs service area map in CalWater's tariffs is inadequate in that it is not sufficiently clear and usable to determine which lots are in its service area and which are not.

10. CalWater has improperly cited GO 103, Sections I.7.a (2) and (3), as justification for denying service to a new applicant where the underlying problem was its own lack of capacity.

Conclusions of Law

1. Through GO 103, Section II.1.a., the Commission requires its regulated water utilities to comply with the regulations and orders of DHS.

2. The Commission should impose a 250-connection limit on the Coast Springs water system. That limit should be adjusted automatically to any new, higher level DHS may later permit.

3. GO 103, Sections I.7.a (2) and (3), may not serve as justification for denying water service to a new applicant where the underlying problem is a utility's own lack of capacity.

4. CalWater should augment its water supply by completing the reconstruction of Well #4 and performing a hydrogeologic study of the Coast Springs area by December 31, 2003.

5. For administrative efficiency, this order should be made effective today.

O R D E R

IT IS ORDERED that:

1. Not later than 30 days after this decision is mailed, California Water Service Company (CalWater) shall file and make effective on five days' notice in accordance with General Order (GO) 96-A an advice letter establishing a moratorium on new connections by adding the following special condition in its tariff Schedule No. RV-CS-1:

Applicants requesting water service that would cause the Coast Springs water system to exceed 250 service connections, or such higher number of connections as DHS may subsequently allow under Coast Springs water system's domestic water supply permit, will be placed on a waiting list. Once additional service connections become available, applicants on the waiting list will be notified in the order they were received. Any previously accepted application for water service in the Coast Springs water system will be revoked if proof of a valid building permit is not provided within 18 months of acceptance of the application for water service or [the date this order was mailed], whichever is later. Applicants who have had their approval revoked in this manner will be placed at the end of the waiting list. This Special Condition shall expire on [three years after the date this order was mailed] absent further order of the Commission.

2. CalWater shall follow the guidelines set forth in the body of this decision in administering the new tariff special condition required by Ordering Paragraph 1.

3. CalWater shall complete its reconstruction of Well #4 and a hydrogeologic study of the Coast Springs area by December 31, 2003.

4. By the time the new connection moratorium established under Ordering Paragraph 1 is scheduled to expire, CalWater shall have completed all improvements necessary to remove the moratorium placed on Coast Springs by DHS and this Commission.

5. Not later than 60 days after this decision was mailed, CalWater shall file in accordance with GO 96-A an advice letter replacing the current Coast Springs service area map in its tariffs with a new service area map that is clear and usable to determine which lots are in its service area and which are not. The new service area map shall take effect upon Water Division's determination that it conforms to this order and correctly reflects Coast Springs' service area boundaries.

6. Not later than 60 days after this decision was mailed, CalWater shall notify by mail all owners of unserved lots within its Coast Springs service territory of the moratorium, the process for applying for a new connection, and the procedures for administering the approved connections list and the waiting list.

7. Not less often than every six months, beginning not later than 60 days after this decision was mailed, CalWater shall send a letter to each applicant on the approved connections list to remind the applicant of the date on which the applicant's previously accepted application for water service in the Coast Springs water system will be revoked if proof of a valid building permit is not provided.

8. Application 02-03-032 is closed.

This order is effective today.

Dated March 13, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President

CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners